

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 54 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

NUTAN MILLS LTD.

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 06/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following questions have been referred to us for our opinion in respect of assessment year 1984-85 :-

1. Whether medical benefits and H.R.A. paid to the Managing Directors were to be considered for computing the disallowance u/s. 40(c) of the Act ?
2. Whether, H.R.A. paid to the employees of the company was to be considered for the purpose of computing the disallowance u/s. 40A(5) of the Act ?
3. Whether all the tours undertaken by a person during the year were to be grouped together and only thereafter the limits laid down in Rule 6-D be applied ?

2. We have heard Mr BB Naik, learned counsel for the revenue, instructed by M/s M.R. Bhatt & Co. Though served, none appears for the respondent-assessee.

3. At the hearing of this reference, Mr Naik points out that the issue regarding reimbursement of medical benefits is covered by the decisions of this Court in Gujarat Steel Tubes Ltd. vs. CIT, (1994) 210 ITR 358 and Ambica Mills Ltd. vs. CIT, (1999) 235 ITR 264 wherein this Court has taken the following view :-

"As regards the medical expenses which were reimbursed to the directors by the assessee, the matter is squarely covered by the decision of this Court in Gujarat Steel Tubes Ltd. v. CIT (1994) 210 ITR 358, in which it was held that reimbursement of medical expenses incurred by the directors is a benefit of the director within the meaning of section 40(c)(i) of the said Act. Similar view has been taken by this Bench on March 11, 1998, in ITR No. 277 of 1987 - Ambica Mills Ltd. v. CIT (1998) 231 ITR 583 in the assessee's own case in respect of the assessment year 1980-81 and it was held that the reimbursement of medical expenses to the director would fall in section 40(c)(i) of the Act and the decision of the Supreme Court in CIT v. Mafatlal Gangabhai and Co. Pvt. Ltd. (1996) 219 ITR 644, which was rendered in the context of payments made to be employees of the company under section 40A(5)(a)(ii) would not be applicable to such case. The Tribunal was, therefore, right in treating reimbursement of medical expenses as not

allowable."

In view of the above decision of this Court, it will have to be held that reimbursement of medical benefits will have to be considered for computing the disallowance under Section 40(c) of the Act.

4. As regards the allowability or otherwise of H.R.A. paid to the Managing Directors, the controversy is concluded in favour of the revenue and against the assessee by the decision of this Court in *Ambica Mills Ltd. vs. CIT*, (1998) 231 ITR 583 wherein it has been held that Section 40(c)(i) of the Act includes direct cash payments to the director. Similar view has been taken in respect of payment of H.R.A. to the employees of the Company in the context of Section 40A(5) of the Act. We accordingly hold that H.R.A. paid to the managing directors has to be considered for computing disallowance under Section 40(c) of the Act.

5. Coming to question No. 2, in view of the aforesaid decision dated 5.2.1997 in Income-tax Reference No. 27 of 1984, it has to be held that H.R.A. paid to the employees of the Company is to be considered for the purpose of computing the disallowance under Section 40A(5) of the Act.

6. Coming to question No. 3, Mr Naik submits that the Andhra Pradesh and Punjab & Haryana High Courts have considered this very controversy and have taken a view in favour of the revenue after analyzing the relevant provisions of Rule 6-D.

7. In *CIT vs. Coromandel Fertilizers Ltd.* (1996) 220 ITR 298, a Division Bench of the Andhra Pradesh High Court speaking through Hon'ble Mr Justice S.S.M. Quadri (as His Lordship then was) has held that the ceiling fixed by clause (b) of sub-rule (2) of Rule 6D has to be calculated with reference to trip of an individual employee, but if an employee travels more than once in an year and spends more amount in one trip but less in another trip, the excess amount expended in one trip cannot be adjusted against the expenditure made in the next or subsequent trips. The actual expenditure incurred on each trip has to be ascertained with reference to the provisions of Rule 6D. The unit of expenditure for purposes of Rule 6D is the trip but not the individual employee. Accordingly, the expenditure incurred by the assessee will have to be taken into consideration with reference to each trip of an individual employee but not with reference to the

totality of the trips made by an individual employee. Similar view has been taken by the Punjab & Haryana High Court in CIT vs. Porritts and Spencer (Asia) Ltd., (2000) 241 ITR 126.

We see no reason to take a different view regarding interpretation of the provisions of Rule 6D.

In view of the above discussion, we hold that all the tours undertaken by an employee during a year are not to be grouped together and that the limits laid down in Rule 6D have to be applied with reference to each trip of an individual employee.

8. In view of the above discussion, we answer the questions as under :-

Question No. 1 is answered in the affirmative i.e. in favour of the revenue and against the assessee.

Question No. 2 is answered in the affirmative i.e. in favour of the revenue and

Question No. 3 is answered in the negative i.e. in favour of the revenue and against the assessee.

We hold that the limits laid down in Rule 6D have to be applied with reference to each trip of an individual employee.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-